

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18663
W/kmg

_____AD3d_____

Argued - March 3, 2008

PETER B. SKELOS, J.P.
DANIEL D. ANGIOLILLO
JOHN M. LEVENTHAL
ARIEL E. BELEN, JJ.

2006-09881

DECISION & ORDER

Carmine Bicchetti, respondent,
v County of Nassau, appellant,
et al., defendants.

(Index No. 14704/00)

Lorna B. Goodman, County Attorney, Mineola, N.Y. (Karen Hutson of counsel), for appellant.

Purcell & Ingrao, P.C., Mineola, N.Y. (Ralph P. Franco, Jr., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Nassau County (Parga, J.), entered August 14, 2006, which denied its motion for summary judgment dismissing the complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

An employee of the defendant County of Nassau was operating a vehicle engaged in snow removal operations on a highway. Therefore, his performance of that activity is subject to the standard of Vehicle and Traffic Law § 1103(b), which requires due regard for the safety of others and sets a recklessness standard in determining the liability to others arising from the performance of the work. In order for the plaintiff to recover damages for injuries caused by the operation of a vehicle subject to the provisions of Vehicle and Traffic Law § 1103(b), the plaintiff “must show that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with

March 25, 2008

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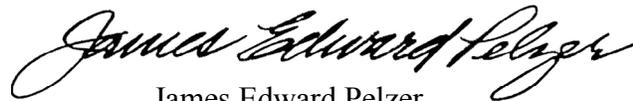
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conscious indifference to the outcome” (*Riley v County of Broome*, 95 NY2d 455 [citation and internal quotation marks omitted]; see *Levine v GBE Contracting Corp.*, 2 AD3d 596; *Farese v Town of Carmel*, 296 AD2d 436).

The County failed to establish its prima facie entitlement to judgment as matter of law by “tendering sufficient evidence to demonstrate the absence of any material issues of fact” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). The record presents triable issues of fact as to the County employee’s conduct in the course of plowing snow, thereby precluding summary judgment (see *O’Keefe v State of New York*, 40 AD3d 607).

SKELOS, J.P., ANGIOLILLO, LEVENTHAL and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court